

DISTRICT COURT SUMMIT COUNTY, COLORADO 501 North Park Avenue Breckenridge, CO 80424		DATE FILED: March 25, 2016 6:33 PM FILING ID: B0A1DCB5CF35A CASE NUMBER: 2016CV30045
STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL,  Plaintiffs,  v.  123MOUNTAIN.COM, INC., 123MOUNTAIN@LAKEWOOD, LLC, 123MOUNTAIN@FRISCO, LLC, INTERNATIONAL ROCKY TRADE, INC., d/b/a “123MOUNTAIN;” AND SUMMIT PEAK, INC., SUMMIT WEARHOUSE, INC., SKI ANGEL US, INC., and OLIVER GOUMAS a/k/a OLIVIER GOUMAS and ANNA SOFIA GOUMAS, individually,  Defendants.		▲ COURT USE ONLY ▲
Attorneys for Plaintiff: CYNTHIA H. COFFMAN Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General SARAH P. JACKSON, *45212 JEFFREY M. LEAKE, *38338 Assistant Attorneys General 1300 Broadway, 7 <sup>th</sup> Floor Denver, CO 80203 (720)508-6209 (720)508-6040 Fax *Counsel of Record	Case No.:  Div.:	
COMPLAINT		

Plaintiff, the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges against Defendants 123Mountain.com, Inc., 123Mountain@Lakewood, LLC, 123Mountain@Frisco, LLC, International Rocky Trade, Inc., d/b/a “123Mountain;” and Summit Peak, Inc., Summit Warehouse, Inc., Ski Angel US, Inc., and Oliver Goumas, a/k/a Olivier Goumas, and Anna Sofia Goumas, individually, as follows:

## INTRODUCTION

This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (2015) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily mandated civil penalties, and for disgorgement, restitution, and other relief as provided in the CCPA.

## PARTIES

1. Cynthia H. Coffman is the duly elected Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the provisions of the CCPA.
2. Defendants Oliver and Anna Sofia Goumas are a married couple who do business under various business names, including 123Mountain.com, Inc., 123Mountain@Lakewood, LLC, 123Mountain@Frisco, LLC, International Rocky Trade, Inc., Summit Peak, INC., Summit Warehouse, Inc., and Ski Angel US, Inc. Documents evidencing Defendants’ registration of these businesses is attached as **Exhibit 1, *Various Business Entities Owned by Defendants - Colorado Secretary of State.***
3. “123Mountain” is a registered trade name of International Rocky Trade, Inc. Anna Sofia Goumas registered the name on September 24, 2010.
4. Defendant International Rocky Trade, Inc. was formed as a Limited Liability Company on June 26, 2009 by Olivier Goumas. It was converted from a Limited Liability Company to a Corporation on December 30, 2014 by Anna Goumas. On February 24, 2016, the registered agent was changed from Anna Goumas to IRT OVERSEA of 243 Ten Mile Circle, Copper Mountain, Colorado 80443 and P.O. Box 1559, Frisco, Colorado 80443.
5. Defendant 123Mountain.com Inc. was formed as a Limited Liability Company on April 15, 2014. It was converted from a Limited Liability Company to a Corporation on January 24, 2016 by International Rocky Trade. Its registered agent is IRT OVERSEA at P.O. Box 1559, Frisco, Colorado 80443.

6. Defendant 123Mountain@Frisco LLC was formed on May 4, 2015. Its registered agent is Anna Sofia Goumas at P.O. Box 1559, Frisco, Colorado 80443. Its principal office address is 156 4<sup>th</sup> Avenue, Frisco, Colorado 80443.

7. Defendant 123Mountain@Lakewood LLC was formed on April 15, 2014. Its registered agent is Oliver Goumas at P.O. Box 1559, Frisco, Colorado 80443.

8. Defendant Summit Peak INC was formed as a Limited Liability Company on November 4, 2013 by Anna Sofia Goumas. It was converted from a Limited Liability Company to a Corporation on January 27, 2016 by International Rocky Trade. Its registered agent is Anna Sofia Goumas, located at P.O. Box 1559, Frisco, Colorado 80443. The “true name” of the incorporator is listed as “IRT oversea” of the same address.

9. Defendant Summit Wearhouse INC was formed as a Limited Liability Company on May 22, 2013 by Oliver Goumas. It was converted from a Limited Liability Company to a Corporation on February 20, 2016 by International Rocky Trade. Its new registered agent is IRT OVERSEA, located at P.O. Box 1559, Frisco, Colorado 80443.

10. Defendant Ski Angel US INC was formed as a Limited Liability Company on April 15, 2014 by Oliver Goumas. It was converted from a Limited Liability Company to a Corporation on February 20, 2016 by International Rocky Trade. Its new registered agent is IRT OVERSEA, located at P.O. Box 1559, Frisco, Colorado 80443.

11. Defendants operate via their website, 123Mountain.com, and, until March 2016, a store located at 156 South 4<sup>th</sup> Avenue in Frisco, Colorado. Defendants formerly operated stores at 243 Ten Mile Circle in Copper Mountain, Colorado, and at 13701 West Jewell Avenue in Lakewood, Colorado. Defendants Oliver Goumas and Anna Goumas manage and operate the business.

12. Defendants Oliver and Anna Goumas own 14075 W. Amherst Avenue, Lakewood, Colorado 80228, but reside in Frisco, Colorado. The mailing address of the Goumases, per the Jefferson County Assessor, is P.O. Box 1559, Frisco, Colorado 80443. Upon information and belief, the Goumases currently live at 85 Galena Street, Frisco, Colorado 80443.

### JURISDICTION AND VENUE

13. Pursuant to C.R.S. §§ 6-1-103 and 6-1-110, this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

14. The violations alleged herein occurred, in part, in Summit County, Colorado. Therefore, venue is proper in Summit County pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2015).

### RELEVANT TIMES

15. This action is timely brought pursuant to C.R.S. § 6-1-115 in that it is brought within three years of the date on which the last in a series of false, misleading, and deceptive acts or practices occurred and/or were discovered. The unlawful activity described herein continues today.

### PUBLIC INTEREST

16. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured consumers in Colorado. In addition, Defendants have taken market share from competitors who do not engage in deceptive trade practices. These legal proceedings are in the public interest and are necessary to safeguard consumers from Defendants' unlawful business practices.

### PERSONAL LIABILITY

17. At all relevant times, Defendants Oliver Goumas and Anna Goumas conceived of, directed, participated in, and controlled the deceptive business practices alleged herein, and are personally liable for all such deceptive trade practices.

### ACTS OF AGENTS

18. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation, shall be deemed to mean that the owners, employees, agents, and representatives of the Defendants performed, directed, or authorized such acts and practices on behalf of the Defendants, while actively engaged in the scope of their duties.

## GENERAL ALLEGATIONS

19. Defendants sell high-end outdoor clothing and equipment on their website, 123Mountain.com, and at their Frisco, Colorado store. Defendants advertise themselves as, “your shop for all your outdoor equipment – the BEST brands for All Outdoor equipment, climbing, hiking, ski, AT, telemark, race and snowboard gear.” **Exhibit 2, Screenshot of 123Mountain.com Homepage.** Defendants’ website includes products from over 130 brands. **Exhibit 2, Screenshot of 123Mountain.com Homepage, Brands.**

20. However, Defendants do not have agreements or relationships with those brands to sell the merchandise. The vast majority of items listed on Defendants’ website are not kept in-stock, and instead have to be ordered from other vendors. This means that Defendants cannot provide consumers the merchandise consumers purchased from Defendants for weeks, months, or even years – if at all.

21. Consumers learn that Defendants have tricked them into buying merchandise only after Defendants have taken their money. Consumers then learn that their problems with Defendants have only just begun: Defendants invoke their unfair and inadequately disclosed “terms and conditions,” which aim to enrich Defendants at the expense of their customers.

I. Defendants deceive consumers into buying merchandise that Defendants do not have.

22. While Defendants formerly operated stores in Frisco, Lakewood, and Copper Mountain, the vast majority of their business takes place through their website, 123Mountain.com. **Exhibit 3, Affidavit of Investigator Ken King** at ¶¶ 9 and 13-14.

23. Defendants keep a small amount of products in their Frisco store: mostly relatively inexpensive clothing and accessories for winter sports. However, on 123Mountain.com, Defendants advertise anything an outdoor hobbyist could ever need – thousands of items, most of which are high-end, of limited supply, expensive, and geared towards a niche market of serious outdoor hobbyists or experts.

24. Defendants advertise these products as “available” for purchase, but in reality do not have the merchandise in stock. After taking a consumer’s order and charging them, Defendants then set out to see if they can purchase that item from the manufacturer or another vendor. This deception is at the core of Defendants’ business model, and forms the foundation for the 139 complaints filed against Defendants with the Better Business Bureau, the Attorney General’s Office, and with the Jefferson County District Attorney. **Exhibit 3, Affidavit of King** at ¶¶ 7-8 and Attachment 1.

25. While Defendants know at the time of sale that they do not have the merchandise and cannot fulfill the consumers' order for weeks, months, years, if ever, they do not reveal this material fact to consumers until after they have been paid in full. **Exhibit 4**, *Affidavit of Culotta*, **Exhibit 5**, *Affidavit of Huston*, **Exhibit 6**, *Affidavit of Attwood*, and **Exhibit 7**, *Affidavit of Smith*.

## II. Defendants' refund policy is unfair and misleading.

26. When consumers learn that the items they ordered are subject to a significant delay, they frequently attempt to cancel the order. **Exhibit 4**, *Affidavit of Culotta* and **Exhibit 7**, *Affidavit of Smith*. But Defendants invoke their inadequately disclosed and unfair refund policy to evade giving the consumer their money back. **Exhibit 6**, *Affidavit of Attwood*.

27. Defendants fail to adequately disclose that special order items, orders over \$2,000, and sale items are non-refundable. Because Defendants do not actually have their own inventory of items, almost everything they sell is a, "special order." Thus, the majority of the items sold by the Defendants are non-refundable. Defendants fail to disclose this and other major loopholes in their refund policy.

28. Defendants also fail to adequately disclose that all orders are subject to a cancellation fee of up to 15 percent. **Exhibit 6**, *Affidavit of Attwood* and **Exhibit 7**, *Affidavit of Smith*. Defendants impose this cancellation fee even when no actual product is in stock, no order from a third party has occurred, and Defendants incurred no costs at all. Defendant Oliver Goumas admits that this fee is charged even if there was no cost to the company, instead claiming that it is a fee for his time. **Exhibit 3**, *Affidavit of King* at ¶¶ 24-25.

29. In addition to the cancellation fee, Defendants deduct shipping costs from any consumers' refund. This is true even where Defendants have not even ordered the item, let alone shipped it to the consumer, and thus absolutely did not incur a shipping cost.

30. Frustrated consumers have resorted to disputing Defendants' charges with their credit card. **Exhibit 6**, *Affidavit of Attwood*. In fact, consumers have filed so many chargebacks that the credit card processors have cancelled Defendants' credit card merchant accounts. **Exhibit 3**, *Affidavit of King* at ¶ 26. As a result, Defendants cannot process credit card charges.

31. Despite the cancellation of their credit card merchant accounts, Defendants still display the logos of Discover, Mastercard, Visa, and American Express on their website. Moreover, Defendants still feign as if they can accept credit card payments. After accepting a credit card payment, Defendants notify the consumer that their card was “denied,” citing false excuses such as the purchase was for an out of country item. **Exhibit 4**, *Affidavit of Culotta*, **Exhibit 5**, *Affidavit of Huston*, **Exhibit 8**, *Affidavit of Armentrout*, and **Exhibit 7**, *Affidavit of Smith*.

32. These misrepresentations are made so that Defendants can then extract a payment by cash, check, or wire transfer. In this way, Defendants negate a consumer’s right to dispute the charge and to get a “charge back” refund from their credit card company.

33. Consumers rarely receive refunds from Defendants. The few consumers who do receive refunds report that checks from Defendants cannot be cashed due to insufficient funds in Defendants’ bank accounts. **Exhibit 5**, *Affidavit of Huston* and **Exhibit 8**, *Affidavit of Armentrout*.

### III. Defendants refuse to honor their return or exchange policy.

34. Defendants further entice consumers to purchase goods from them by advertising that they “try to guarantee complete satisfaction with unlimited lifetime returns. If at any time – now, next month, even in 30 years – you’re not 100% satisfied, send your gear back for a refund.” **Exhibit 2**, *Screenshot of 123Mountain.com: Return Policy*. In reality, Defendants’ return policy is anything but a guarantee of complete, 100% satisfaction. It is an unfair and excessively complicated return process that seriously deviates from Defendants’ advertisements.

35. Because they do not actually have an inventory of items for sale, Defendants frequently cannot obtain what the consumer ordered, and as a result, purchase and ship items completely different from what the consumer ordered. **Exhibit 3**, *Affidavit of King* at ¶¶ 7-8. Defendants have no qualms about shipping to consumers a different size, brand, or model year than what was actually ordered. **Exhibit 9**, *Affidavit of Von Stein*, **Exhibit 10**, *Affidavit of Oelke*, **Exhibit 11**, *Affidavit of Prenner*.

36. When consumers complain, Defendants advise consumers to re-order the item. **Exhibit 9, Affidavit of Von Stein.** As for the unwanted item, Defendants advise the consumer to go through the full return process – a process which requires the consumer to (1) prove to Defendants that the merchandise was purchased from Defendants, (2) prove the delivery does not match their original order, (3) ship the merchandise back to Defendants’ store, at the consumer’s expense, (4) await a refund on the returned item, minus any shipping or return fees taken out by Defendants, and (5) trust Defendants that they will ship the right item the next time.

37. Defendants wrongfully accuse consumers of lying about what was actually delivered to them, even accusing consumers of having purchased the delivered merchandise from someone else.

38. Even when Defendants concede that they shipped the wrong merchandise, Defendants will attempt to use other methods to evade returns or exchanges.

39. For example, Defendants tell consumers that what they received was on sale, and thus cannot be returned or exchanged. Defendants even use the “on sale” excuse when the consumer complains that Defendants shipped the wrong merchandise. **Exhibit 9, Affidavit of Von Stein.**

40. Defendants also deny refunds on the grounds that the goods were used or opened. However, Defendants specifically direct consumers who call to complain to open the package to make sure that product is what the consumer says it is, and then deny the refund, return or exchange on the grounds that the consumer opened or used the product. **Exhibit 10, Affidavit of Oelke.**

41. Defendants also deny refunds, returns, and exchanges by refusing to receive return shipment of the goods.

IV. Defendants advertise items from brands with whom it does not have a relationship or authorization to sell.

42. While Defendants advertise goods from over 130 brands on its website, it is not authorized to sell the goods of some or all of those brands. In fact, several manufacturers have taken active steps to ensure that Defendants do not sell their products.



43. Reputable brand names are damaged by Defendants' actions. When Defendants fail to ship a brand name item for weeks, months, or years, that company frequently receives a complaint. **Exhibit 12, Affidavit of Slater.** In order to maintain their reputations, some companies will return the consumer's money or send the product at the company's own expense.

44. Likewise, when Defendants ship consumers the wrong goods, some manufacturers feel compelled to provide an exchange to the consumer to maintain customer relations. **Exhibit 12, Affidavit of Slater.**

45. Because of consumer complaints, vendors have terminated their relationships and agreements with Defendants. 123Mountain.com continued to display the availability of these brand name goods despite Defendants' knowledge that they do not possess such goods and that the vendor does not wish to do business with them.

46. Recently, 123Mountain has removed products from some vendors from its website. However, Defendants did not remove the merchandise after manufacturers ordered them to do so – it was only after Defendants learned of the State's investigation. Furthermore, Defendants have not removed the vendor's brand name from the website, only the merchandise. For other brands that Defendants have yet to alienate, Defendants still advertise products as "available," thus continuing their deceptive business model.

### **FIRST CLAIM FOR RELIEF**

(Makes a false representation as to affiliation, connection, or association with or certification by another in violation of C.R.S. § 6-1-105(1)(c))

47. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 46 of this Complaint.

48. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made false representations as to their affiliation, connection, or association with others.

49. Defendants advertise goods for sale from companies with whom they do not maintain relationships and cannot deliver goods from those companies. Once a consumer has placed an order and has been charged for those goods, they are notified that the goods will take much longer to ship than the consumer would have reasonably anticipated. This is because Defendants lack relationships with vendors.

50. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **SECOND CLAIM FOR RELIEF**

(Represents that goods are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another, in violation of C.R.S. § 6-1-105(1)(g))

51. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 50 of this Complaint.

52. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants represent that the items sold to consumers are of a particular style or model, and know that they are of another. Defendants frequently ship to consumers a product that the consumer did not order.

53. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **THIRD CLAIM FOR RELIEF**

(Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction in violation of C.R.S. § 6-1-105(u))

54. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 53 of this Complaint.

55. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have failed to disclose material information concerning goods, services, or property at the time of sale. Such failures to disclose material information were intended by Defendants to induce consumers to enter into a transaction with Defendants. Defendants advertise goods as “available” when they know that the items are not available at all, and could take weeks, months, or years to ship.

56. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

#### **FOURTH CLAIM FOR RELIEF**

(Employs “bait and switch” advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by the following practice: failure to make deliveries of the goods within a reasonable time or to make a refund therefor, in violation of C.R.S. § 6-1-105(1)(n) and (VII))

57. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 56 of this Complaint.

58. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants advertised goods and then failed to make deliveries on those goods within a reasonable time or failed to make a refund therefor.

59. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

#### **FIFTH CLAIM FOR RELIEF**

(Advertises or otherwise represents that goods are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor in violation of C.R.S. § 6-1-105(1)(r))

60. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 through 59 of this Complaint.

61. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have advertised a 100% Satisfaction Guarantee without clearly and conspicuously disclosing material conditions on that guarantee.

62. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1)(c), (g), (u), (n), and (r).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2015).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to C.R.S. § 6-1-112(1)(a) (2015), or \$10,000 per violation pursuant to C.R.S. § 6-1-112(1)(c).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to C.R.S. § 6-1-113(4) (2015).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 25<sup>th</sup> day of March, 2016.

CYNTHIA H. COFFMAN  
Attorney General

*s/ Sarah P. Jackson*

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